



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO ELLIS LAND, LLC

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185, 62.1-44.15(8a) and (8d) between the State Water Control Board and Ellis Land, LLC, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Ellis Land" means Ellis Land, LLC, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
6. "NOV" means Notice of Violation.
7. "Order" means this document, also known as a Consent Special Order.

8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Site" means the property in Westmoreland County, Virginia, on which Ellis Land, LLC is constructing the Westmoreland County Athletic Complex. The property is located across Route 3 from the entrance to Westmoreland State Park (Route 347), and is also described in Deed Book 735, Page 667 in the Circuit Court of Westmoreland County.

SECTION C: Findings of Fact and Conclusions of Law

1. Ellis Land owns a 75-acre parcel in Westmoreland County ("Site"), on which it is planning to construct the Westmoreland County Athletic Complex. Early grading on a portion of the site began in April 2007.
2. After receiving information that unauthorized impacts to streams and wetlands may have occurred, DEQ staff inspected the Site on November 8, 2007. Staff observed sedimentation in approximately 791 linear feet of downstream stream channel. In-stream sediment averaged 18 inches in depth, and ranged up to 30 inches deep in some locations.
3. Va. Code §621-44.15:20.A and 9 VAC 25-210-50.A state that no person may fill or discharge any pollutant into surface waters, including wetlands, or otherwise alter the physical, chemical or biological properties of surface waters except in compliance with a Virginia Water Protection ("VWP") permit. DEQ has not issued a VWP permit for this site.
4. DEQ issued Notice of Violation No. 07-11-PRO-702 on December 6, 2007 for the apparent violation of Va. Code §62.1-44.15:20.A and 9 VAC 25-210-50.A due to in-stream sedimentation.
5. DEQ staff revisited the site on December 17, 2007. Upon further investigation, additional impacts to wetlands and stream channels were discovered. At the request of DEQ staff, Ellis Land obtained a wetland delineation of the Site. The wetland delineation indicated that an additional 215 linear feet of stream channel and 0.06 acres of wetlands were filled. DEQ has not issued a VWP permit for these impacts.
6. Notice of Violation No. 08-01-PRO-703 was issued on January 28, 2008 for the apparent violation of Va. Code §62.1-44.15:20.A and 9 VAC 25-210-50.A due to the fill of wetlands and streams that occurred during construction activities.
7. Ellis Land submitted a plan to remove the sediment from the stream channel on January 20, 2008. The plan was approved by DEQ on January 29, 2008.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d) and §62.1-44.34:20, orders Ellis Land, LLC, and Ellis Land, LLC agrees, to perform the actions described in Appendix A. In addition, the Board orders Ellis Land, LLC, and Ellis Land, LLC voluntarily agrees, in settlement of the violations cited in this Order, to pay a civil charge of **\$49,802** consisting of the following:

<u>Payment Amount</u>	<u>Due Date</u>
\$9,961	September 1, 2008
\$9,961	October 1, 2008
\$9,960	November 1, 2008
\$9,960	December 1, 2008
\$9,960	January 1, 2009

Each payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Ellis Land, LLC. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Ellis Land, LLC, for good cause shown by the Ellis Land, LLC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Ellis Land, LLC by DEQ on December 6, 2007 and January 28, 2008. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Project as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

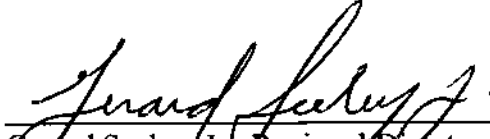
3. For purposes of this Order and subsequent actions with respect to this Order, Ellis Land, LLC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Ellis Land, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Ellis Land, LLC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Ellis Land, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Ellis Land, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Ellis Land, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ellis Land, LLC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Ellis Land, LLC intends to assert will result in the

impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Ellis Land, LLC. Notwithstanding the foregoing, Ellis Land, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Ellis Land, LLC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Ellis Land, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Ellis Land, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this July 31, 2008.


Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

Ellis Land, LLC voluntarily agrees to the issuance of this Order.

By: 
Richard Ward, II, Managing Member
Ellis Land, LLC

Date: 5.14.2008

Commonwealth of Virginia

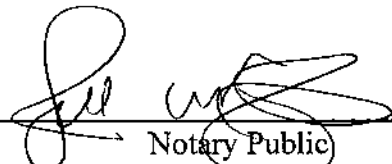
City/County of James City

The foregoing document was signed and acknowledged before me this 14th day of

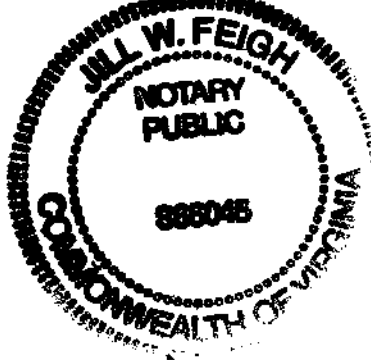
May, 2008, by Richard Ward, II, who is
(name)

Managing Member of Ellis Land, LLC, on behalf of Ellis Land,
(title)

LLC.


Notary Public

My commission expires: March 31, 2009



APPENDIX A

Wetland and Stream Restoration

1. Ellis Land shall correct the sedimentation impacts to streams as detailed in the approved corrective action plan ("CAP") dated January 20, 2008. Mechanized equipment shall not enter State waters or wetlands at any time during the restoration, except as authorized in advance in writing by the Department. Modifications to the corrective action plan or schedule must be approved in advance by the Department.
2. **No later than June 1, 2008**, Ellis Land shall submit a complete Stream and Wetland Restoration Plan ("Restoration Plan") to restore the impacts to 215 linear feet of stream channel and 0.06 acres of wetlands described in Part I.C.5 of this Order. For wetland restoration areas, the Restoration Plan shall include a conceptual grading plan; a conceptual planting scheme, including suggested plant species and zonation of each vegetation type proposed; a description of existing soils, including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; a draft design of any water control structures; a description of any structures and features necessary for the success of the site; a construction schedule. For stream restoration areas, the Restoration Plan shall include the proposed stream segment restoration locations, including plan view and cross-section sketches; the proposed restoration measures to be employed, including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; reference stream data, if available; and a construction schedule. Restoration shall be conducted in accordance with the approved Restoration Plan, including the incorporated schedule(s). Mechanized equipment shall not enter State waters or wetlands at any time during the restoration, except as authorized in advance in writing by the Department. Modifications to the Restoration Plan or schedule must be approved in advance by the Department.
3. **No later than June 1, 2008**, Ellis Land shall submit a Monitoring Plan to DEQ to monitor the results of the actions performed in accordance with the CAP and the Restoration Plan. The Monitoring Plan shall include, at minimum: goals for the restored/corrected areas; a monitoring schedule; photographic, vegetative, and hydrologic monitoring stations and methodology; methodology to measure any new sediment deposition; and success criteria. Monitoring shall be performed for at least 5 years in accordance with the approved plan and schedule, and reports shall be submitted no later than **December 31st** of each monitoring year. Any alterations or maintenance conducted during the monitoring year shall be included in this report.
 - a. If the areas fail to meet the success criteria specified in the approved Monitoring Plan, as determined by DEQ or Ellis Land at any time during the monitoring period, or if visual observations conclude that the site is not progressing towards the overall restoration goals, the reasons for this failure shall be identified by Ellis Land. In addition, a remediation plan shall be submitted to DEQ for review and approval with that year's monitoring report or within 90 days of the determination that

success criteria are not being met, whichever occurs first. The DEQ-approved remediation plan shall be implemented by the permittee in accordance with the approved schedule.

- b. If the areas fail to meet all success criteria by the end of the last monitoring year and Ellis Land's or DEQ's analysis indicates that corrective action cannot sufficiently address the reasons for such failure, Ellis Land shall submit to DEQ for review and approval, within 90 days of such determination, an alternate mitigation plan and schedule for the unsuccessfully restored wetlands and/or stream. The proposed mitigation plan shall conform to the applicable provisions of provisions of Va. Code § 62.1- 44.15:21.B and 9 VAC 25-210-116 and shall be implemented upon DEQ's approval. If the purchase of mitigation bank credits or contribution to an in-lieu fee fund is proposed, the proof of purchase or contribution shall be submitted to DEQ within 60 days of DEQ's approval of the alternate mitigation plan.

4. All requirements of Appendix A of this Order shall be submitted to:

Allison C. Dunaway
Enforcement Manager
VA DEQ – PRO
4949-A Cox Road
Glen Allen, VA 23060
Phone: (804) 527-5086
Fax: (804) 527-5106
Email: acdunaway@deq.virginia.gov